

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-182226

DATE: APR 21 1976

MATTER OF: James E. Brown--Reconsideration of Disallowance of Living Quarters Allowance and Backpay

- DIGEST:
1. On basis of United States v. Bank of Metropolis, 40 U. S. 377 (1841) employee stationed overseas contends that once one personnel officer determined he was entitled to living quarters allowance, another personnel officer had no authority to reverse that determination. However, we held that determinations made by one personnel officer can be reversed by another since such determinations are interlocutory and not final orders.
 2. Employee also contends that he is entitled to backpay incident to 30-day period agency placed employee on LWOP, that he contends was adverse action. However, employee did not file appeal with Civil Service Commission (CSC) of alleged adverse action within prescribed time limit and CSC refused to consider appeal. Because no determination has been made that employee suffered unjustified personnel action, there is no entitlement to backpay under law and regulations.

This matter involves a request for review and reconsideration, by Mr. James E. Brown, a Department of the Army civilian employee stationed in Germany, of our decision B-182226 of January 27, 1975, that sustained the disallowance of Mr. Brown's claim, for living quarters and relocation allowances and backpay, made by our Transportation and Claims Division (now Claims Division) in a settlement of July 31, 1974.

Mr. Brown was hired by the United States Army Engineer Command, Frankfurt, Germany, as an Accounting Technician, grade GS-5, on May 7, 1971. Shortly thereafter the employee was transferred to Worms, Germany. On August 5, 1971, in Frankfurt, Germany, during the personnel processing incident to the change of station, Mr. Brown executed a 36-month transportation agreement (DD Form 1617), with the Department of the Army which listed Route 5, Box 152A, Lewisburg, Tennessee, as his place of actual residence at the time of his initial employment with the Department of the Army. The significance of this agreement was to authorize travel and transportation expenses

and movement of household effects for the employee and his immediate family as provided in 5 U.S.C. § 5722 (1970), including renewal agreement and separation travel to his place of actual residence at the time he commenced his employment, after completion of 36 months of service overseas. In addition, an employee whose actual place of residence has been determined to be outside the overseas geographical area is normally entitled to a living quarters allowance (LQA) under Department of State Standardized Regulations (DSSR).

Mr. Brown was transferred to Worms, Germany, and promoted to the position of Administrative Assistant, grade GS-7, effective August 8, 1971. The Worms Area Civilian Personnel Office (WACPO) notified him that he was ineligible to negotiate the 36-month transportation agreement providing separation travel to the United States which had been executed at Frankfurt, inasmuch as he was neither recruited from outside the geographical locality nor did his presence in the area meet any of the qualifying reasons stated in paragraph C4002 of Volume 2 of the Joint Travel Regulations (JTR). Similarly WACPO determined that he was not entitled to a LQA. Notwithstanding these determinations, the WACPO withdrew the old transportation agreement from the file and negotiated a 12-month transportation agreement (DD Form 1617) with Mr. Brown, which also listed his actual place of residence at the time of his appointment as Route 5, Box 152A, Lewisburg, Tennessee 37091, and this agreement was signed by the employee on August 9, 1971.

Mr. Brown filed a grievance with his agency concerning these WACPO determinations which reduced his entitlements. The grievance was heard by an examiner from the United States Army Civilian Appellate Review Office (USACARO) who on the basis of all available evidence concluded that as of August 8, 1971, Mr. Brown satisfied neither the eligibility criteria for a LQA nor the JTR eligibility criterion for a transportation agreement conferring entitlement to renewal agreement and separation travel to CONUS. Moreover, the examiner also concluded that the transportation agreement with Mr. Brown should reflect Frankfurt, Germany, and not Lewisburg, Tennessee, as his place of residence at the time of appointment.

We sustained the USACARO examiner's conclusions in our Settlement Certificate of July 31, 1974, and again in our decision B-182226, January 27, 1975, that affirmed the settlement. However,

Mr. Brown continues to vigorously challenge the USACARO examiner's conclusions in his request for reconsideration of the aforementioned decision. Essentially, he contends, first, that WACPO had no legal authority to reverse the determination of entitlements made by the Frankfurt Area Civilian Personnel Office (FACPO) which reversal caused him to file a grievance. Second, he contends that there was not substantial evidence to support the determination made by the examiner that Mr. Brown's "place of actual residence" for travel purposes was Offenbach, Germany, a suburb of Frankfurt.

Mr. Brown relies on United States v. Bank of Metropolis, 40 U. S. 377 (1841) in support of his first contention. The syllabus of this case reads in pertinent part as follows:

"The Postmaster General had the same power, and no more, over the credits allowed by his predecessor, if allowed within the scope of his official authority, as given by law to the head of the Department. This right in an incumbent of reviewing a predecessor's decisions, extends to mistakes in matters of fact, arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced. But, if a credit has been given, or an allowance made by the head of a Department, and it is alleged to be an illegal allowance, the judicial tribunals must be resorted to, to construe the law under which the allowance was made; and to settle the right between the United States, and the party to whom the credit was given. It is no longer a case between one officer's judgment, and that of his successor. * * *"

Mr. Brown argues that the above-quoted legal principle precluded the WACPO from reversing the determination concerning his entitlements made by the FACPO. We disagree. We construe the above-quoted legal principle as precluding a successor agency head from reconsidering a final order issued by his predecessor. See for example 16 Comp. Gen. 51 (1936); 16 id. 118 (1936), 2 Am. Jur. 2d Administrative Law §§ 532, 583. Hence, this legal principle would not be apposite to Mr. Brown's situation inasmuch as the FACPO was not an agency head and the eligibility determination

he made was not a final order. Moreover, apparently, Mr. Brown, himself did not consider the determinations made by the FACPO and WACPO as final orders when they were made since he exercised his right to file a grievance on the WACPO determination. The grievance was duly processed by a USACARO examiner who made findings, conclusions and recommendations adverse to Mr. Brown concerning the entitlements he claimed which in effect sustained the determination made by the WACPO. Our review of the record indicates there was substantial evidence to support the examiner's finding that at the time of employment, Mr. Brown's place of actual residence was Frankfurt, Germany, and not Lewisburg, Tennessee. The USACARO's recommendations were accepted by the Director, General Education Development (GED) acting for the Commander, U.S. Theater Army Support Command, Europe (TASCOM), on November 2, 1972. By letter dated November 24, 1972, Headquarters, TASCOM, advised Mr. Brown that the decision by the Director, GED, to accept the USACARO examiner's recommendations, was pursuant to Army Regulation CPR 771.c-8g(2), "final and not subject to further review within the Department of the Army." Accordingly, it was only in November 1972 that a final order was issued on the matter that was binding on the agency head. Thus the previous FACPO determination of August 5, 1971, concerning Mr. Brown's eligibility to entitlements was interlocutory in nature and subject to reversal by the same or another authorized official within the Department of the Army whether or not they were incumbents of the same position. We are therefore of the opinion that the WACPO properly exercised his authority to correct Mr. Brown's records which lead to the withdrawal of his living quarters allowance. See for example 39 Comp. Gen. 337 (1959). Consequently we must affirm our earlier holding with regard to this issue.

In addition, Mr. Brown has requested this Office to review that portion of the Settlement Certificate of July 31, 1974, that denied his claim for backpay resulting from an alleged improper action by his agency. His agency placed him in a leave without pay (LWOP) and involuntary leave status, between January 15, 1973, and February 16, 1973, which Mr. Brown contends was an improper suspension in violation of the Adverse Actions Procedures contained in 5 U. S. C. § 7501 and Civil Service Commission implementing regulations. The record indicates Mr. Brown failed to submit an appeal to the Commission within 15 days after the alleged adverse action had been effected by his agency, as required by Commission regulations. When Mr. Brown finally submitted an appeal after a delay of several months,

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the Commission refused to entertain it. Moreover, the Commission refused to extend its filing time limit inasmuch as it found that Mr. Brown was aware of its 15-day time limit and had stated no valid reason for not following it. Hence, the agency charged with considering appeals of adverse actions has refused to find that Mr. Brown underwent an unjustified or unwarranted personnel action incident to his alleged adverse action, pursuant to the Back Pay Act, 5 U.S.C. § 5596 (1970) and implementing regulations contained in 5 C.F.R. Part 550 subpart H. In the absence of such a finding, there is no entitlement to backpay. See 54 Comp. Gen. 760 (1975).

Therefore the Settlement Certificate of July 31, 1974, that disallowed Mr. Brown's claim and our decision B-182226, January 27, 1975, that sustained the settlement are hereby affirmed.

R. F. Keller

Deputy: Comptroller General
of the United States